

REMARKS/ARGUMENTS

Claims 1-3, 7, 8, and 10-18 are pending in this application as amended through the Amendment filed July 16, 2003. In this amendment, Claims 1, 2, 7, and 10 have been amended; and Claims 11-18 have been canceled. Claims 3 and 8 remain unchanged. In accordance with the new rules, all the claims are shown above, and the amended claims are shown in a redlined format.

In view of the amendments, as discussed below, reconsideration of the Application and issuance of a Notice of Allowability are respectfully requested.

The Examiner rejected the Claims 1-18 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention.

With respect to all the claims, the Examiner asserts that the fact that the amount administered depends upon the "total daily consumption of protein by the subject" as well as the amount of protein contained in the "combination of milk protein concentrates and probiotic bacteria" renders the claim incomplete. Applicant respectfully disagrees.

Contrary to the Examiner's assertion, there are only two variables: (1) the protein contained in the "combination of milk protein concentrates and probiotic bacteria"; and (2) the "subject's daily consumption of protein". The determination of a subjects daily consumption of protein can be determined by one skilled in the art (such as a dietitian or physician) through questioning of the subject, a task for which a dietitian or physician is fully trained. Additionally, the amount of protein per volume in the combined milk protein concentrates and probiotic bacteria will also be known. Therefore, it is fully within the ability of one skilled in the art to determine how much of the combined milk protein

concentrates and probiotic bacteria to administer to increase the daily consumption of protein to the range set forth in Claim 1. The same is true for independent Claims 7 and 10. Claims 11-18 are directed to the combination itself as opposed to the administration of the combination. Hence, this objection is not relevant to Claims 11-18. Claims 1-3, 7, 8 and 10 are believed to be complete.

The Examiner entered a new rejection on two grounds to the phrase "to approximately 1.5 grams to approximately 4.0 grams." The Examiner asserted that the range does not provide one skilled in the art with an actual amount to be administered, because the starting amount of protein will vary with individual subjects. As noted above, the determination of a subject's daily protein intake is within the routine skill of one skilled in the art. The Examiner also asserted that it was not clear if a range was being claimed. To make this clear, Claims 1, 7 and 10 have been amended to provide that the amount administered is sufficient "to increase the subject's total daily consumption of protein to between approximately 1.5 grams and approximately 4.0 grams of protein per kilogram of body weight per day." The use of "between" and "and" should make clear that a range is being claimed.

In the "claim objections" at the bottom of page 3, the Examiner noted that a period (".") was set forth in the middle of several of the claims. Applicant has reviewed the claims and removed periods were found in the middle of the claim. Additionally, Applicant noted that there was no period at the end of Claim 18. Hence, Claim 18 has been amended to add a period at the end of the claim.

The claims as now set forth are believed to be in compliance with the requirements of §112. Withdrawal of this rejection is respectfully requested.

The Examiner has continued his rejection of Claims 11-18 under 35 U.S.C. §102 as being anticipated by, or in the alternative, under 35 U.S.C. §103 as being unpatentable over Meister et al. (Pat. No. 6,200,609). Claims 11-18 have been canceled from the application without prejudice to filing a continuation with respect thereto. Hence, this rejection is moot.

Claims 1-3, 7, 8, and 10 remain rejected under 103 as being obvious in view of Meister et al., Bohren, Kroneberg, Jameson et al., Nielsen, or Kosikowski et al.¹ Independent Claims 1, 7, and 10 are all directed to a method of increasing protein absorption and utilization by a subject including administering a sufficient amount of a combination of milk protein concentrates and probiotic bacteria "to increase the total daily consumption of protein to between approximately 1.5 grams and approximately 4.0 grams per kilogram of body weight". Applicant respectfully reiterates that none of the references of record teach or suggest Applicant's claimed method, and in particular, none of the references teach or suggest that it would be desirable to provide a subject with a sufficient amount of the claimed combination of milk protein concentrates and probiotic bacteria "to increase the subject's total daily consumption of protein to between approximately 1.5 grams and approximately 4.0 grams of protein per kilogram of body weight per day". Hence, Claims 1, 7 and 10 are believed to be in condition for allowance. Claims 2-3

¹ The Examiner states that in the prior amendment, Applicant failed to respond to the rejections based on Bohren, Kroneberg, Jameson et al., Nielsen, or Kosikowski et al. Applicant respectfully points out that on page 14 of the amendment, these references are in fact mentioned. Further, Applicant notes that at pages 14-16 were Claims 1 and 7 were discussed, Applicant refers to the "none of the references" and "the prior art of record". Thus, Applicant respectfully submits that the rejections were responded to. To the extent the amendment might not have been complete, Applicant should have been given the opportunity to supplement the amendment in accordance with 37 C.F.R. §1.135(c) and MPEP §714.03 in view of the fact that the amendment filed was a *bona fide* attempt to advance the application.

depend from Claim 1, and claim 8 depends from Claim 7. Hence, these claims are also believed to be in condition for allowance.

In view of the foregoing, Claims 1-3, 7, 8, and 10 are believed to be in condition for allowance. A Notice of Allowability with respect to these claims is thus respectfully requested.

Respectfully Submitted,

Dated: 10-31-03



Paul M. Denk
Registration No. 22,598
763 South New Ballas Road
St. Louis, Missouri 63141
Tel: (314) 872-8136